

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BENJAMIN GORDON MOORE,

Defendant-Appellant.

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UNPUBLISHED

June 13, 2013

No. 313799

Oakland Circuit Court

LC No. 2012-241911-FH

Before: RIORDAN, P.J., and TALBOT and FORT HOOD, JJ.

PER CURIAM.

In this interlocutory appeal, Benjamin Gordon Moore appeals by leave granted the trial court's order denying his motion to suppress statements.<sup>1</sup> We vacate the trial court's order denying Moore's motion to quash the information, and remand the matter to the trial court for proceedings consistent with this opinion.

Moore contends that the trial court erred when it denied his motion to quash the information because there was no probable cause to arrest him. We find that we have inadequate information to determine whether the police had probable cause to arrest Moore. "This Court reviews a trial court's decision with regard to a motion to quash an information for an abuse of discretion."<sup>2</sup> "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes."<sup>3</sup>

"In order to lawfully arrest a person without a warrant, a police officer must possess information demonstrating probable cause to believe that an offense has occurred and that the

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<sup>1</sup> Moore filed a motion to quash the information for lack of probable cause to arrest and to bind him over, as well as a motion to suppress statements. At the hearing on the motions, the court ruled on both motions, but the court's order only addresses his motion to suppress statements.

<sup>2</sup> *People v Clement*, 254 Mich App 387, 389; 657 NW2d 172 (2002).

<sup>3</sup> *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

defendant committed it.”<sup>4</sup> “Probable cause to arrest exists where the facts and circumstances within an officer’s knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.”<sup>5</sup> The standard for probable cause “‘is a practical, nontechnical conception’ judged from the totality of the circumstances before the arresting officers.”<sup>6</sup> “[T]he arrest standard looks only to the probability that the person committed the crime as established at the time of the arrest[.]”<sup>7</sup>

In the instant case, on February 22, 2012, at approximately 7:00 a.m., the police executed a search warrant of a home located at 155 Mark Avenue in Pontiac. Moore was discovered on the floor of an upstairs bedroom holding onto a dog. A woman was also in the home lying on the living room couch. They were the only two individuals in the home. During a search of the house, police found “narcotic packaging” and razor blades in an undisclosed location. A digital scale and “things of that nature” were found on the kitchen counter. No drugs were found in the home or on Moore’s person.

At the preliminary hearing, a detective familiar with narcotics trafficking and who was involved in the execution of the search warrant testified that the items discovered in the home are commonly associated with narcotics distribution. The detective, however, failed to indicate what specifically was found on the kitchen counter, what the “narcotics packaging” was comprised of, or where the razor blades and packaging materials were located. There was no evidence presented that Moore owned or rented the home. The transcript of the evidentiary hearing suggests, however, that the search warrant for 155 Mark Avenue, which was one of three interrelated search warrants executed simultaneously, may have in some way identified Moore. The lower court record does not include the search warrant for 155 Mark Avenue, the affidavit in support of the search warrant, or the affidavit of return. While the search warrant was provided to the trial court, no testimony was elicited regarding its contents. Thus, the extent that the search warrant may have had bearing on the officers’ decision to arrest Moore is unclear.

In light of these deficiencies in the record, we vacate the trial court’s order denying Moore’s motion to quash the information based on Moore’s allegation that there was no probable cause to arrest him. We remand the matter to the trial court for an evidentiary hearing for additional factual findings regarding whether there was probable cause to arrest Moore, at which time the trial court shall preserve the search warrant, the affidavit in support of the search warrant, and the affidavit of return in the lower court record. If the trial court determines that probable cause to arrest Moore did not exist, we further order the trial court to make findings

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<sup>4</sup> *People v Cohen*, 294 Mich App 70, 74-75; 816 NW2d 474 (2011) (citation and quotation marks omitted).

<sup>5</sup> *Id.* at 75 (citation and quotation marks omitted).

<sup>6</sup> *Id.* (citation omitted).

<sup>7</sup> *Id.* at 76 (citation and quotation marks omitted).

regarding whether the prosecution is able to sustain its “burden of showing that the confession was free of the primary taint of [Moore’s] illegal arrest.”<sup>8</sup>

For the sake of judicial economy and to provide guidance to the trial court, we address Moore’s remaining issue on appeal. Moore argues that the trial court erred when it denied his motion to suppress statements that he made to police after his arrest. We disagree. “This Court reviews a trial court’s factual findings at a suppression hearing for clear error, and the court’s ultimate ruling de novo.”<sup>9</sup>

We are not persuaded by Moore’s contention that the statements he made to police should have been suppressed because he was not read his *Miranda*<sup>10</sup> rights until after he was interviewed. *Miranda* warnings are required “in order to protect the [Fifth Amendment] privilege against compelled self-incrimination during custodial police interrogations.”<sup>11</sup> Thus, the police, before engaging a defendant in a custodial interrogation, must warn the defendant of his *Miranda* rights.<sup>12</sup> Such rights may be waived by a defendant; however, the waiver must be “made voluntarily, knowingly and intelligently.”<sup>13</sup>

Moore testified that his *Miranda* rights were not read to him until after he answered the officers’ questions and signed a written statement. The officers testified, however, that before Moore was questioned, Moore followed along while an officer read him his *Miranda* rights from a form. Moore then initialed and signed the form, which was presented to the trial court. This Court is required to give deference to the trial court’s determination regarding the “credibility of the witnesses whose testimony is in conflict” during a suppression hearing.<sup>14</sup> Accordingly, relief is not warranted.

Moore further unsuccessfully argues that his statements to police must be suppressed because they were not made voluntarily as he was experiencing heroin withdrawal. “Statements made by a defendant during a custodial interrogation are inadmissible unless the defendant

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<sup>8</sup> *People v Mosley*, 400 Mich 181, 183; 254 NW2d 29 (1977).

While Moore’s statement of the question presented appears to also challenge the trial court’s determination that he was appropriately bound over, no such argument was made in his brief on appeal. Thus, this argument is abandoned. *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001). That notwithstanding, considering the probable cause standard for bind over and our review of the record, we find that there was no error by the trial court. *Cohen*, 294 Mich App at 76.

<sup>9</sup> *Id.* at 74.

<sup>10</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

<sup>11</sup> *People v Shafier*, 483 Mich 205, 212; 768 NW2d 305 (2009).

<sup>12</sup> *People v Daoud*, 462 Mich 621, 633; 614 NW2d 152 (2000).

<sup>13</sup> *Id.* (citation and quotation marks omitted).

<sup>14</sup> *People v Geno*, 261 Mich App 624, 629; 683 NW2d 687 (2004).

voluntarily, knowingly, and intelligently waived his or her right against self-incrimination.”<sup>15</sup> The voluntariness of a statement “is determined by examining the totality of the circumstances surrounding a statement to establish if it was the product of an essentially free and unconstrained decision by its maker.”<sup>16</sup>

There are various factors to consider in determining the voluntariness of a statement given by a defendant during a police interrogation.<sup>17</sup> Moore’s contention that the heroin withdrawal that he was allegedly experiencing should result in a finding that his statement was involuntary is not supported by the record. According to the officers who encountered Moore on the day of his arrest, before the statements at issue were made, Moore indicated that he was not under the influence of drugs. Additionally, he did not appear to be under influence of heroin, or to be experiencing heroin withdrawal symptoms. Moreover, Moore did not have trouble focusing, his speech was coherent, and the officers had no difficulty communicating with him. One officer testified that he asked Moore if he was experiencing withdrawal, to which Moore responded, “No.” Moore allegedly also told one of the officers that he would not begin experiencing withdrawal until later. Because we give deference to the trial court’s determination of the credibility of witnesses during a suppression hearing, Moore’s argument must fail.<sup>18</sup>

Furthermore, the record reveals that Moore is a high school graduate, who has experience with police, was not detained for a long period of time before he spoke with the police, and the police questioning was brief. The police did not withhold food or water from him, and Moore never requested that the officers stop the interview. Therefore, under the totality of the circumstances, the record supports that his statements were made voluntarily.<sup>19</sup>

Vacated and remanded to the trial court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Riordan  
/s/ Michael J. Talbot  
/s/ Karen M. Fort Hood

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<sup>15</sup> *People v Roberts*, 292 Mich App 492, 505; 808 NW2d 290 (2011).

<sup>16</sup> *Id.*

<sup>17</sup> *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).

<sup>18</sup> *Geno*, 261 Mich App at 629.

<sup>19</sup> *Cipriano*, 431 Mich at 334.